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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

RUSSIAN FEDERATION

1. The Committee considered the fourth periodic report of the Russian Federation (CCPR/C/84/Add.2) at its 1426th to 1429th meetings (see CCPR/C/SR.1426 to 1429), held on 17 and 18 July 1995, and adopted[1] the following comments.

A. Introduction

2. The Committee welcomes the fourth periodic report of the Russian Federation and views with satisfaction its dialogue with the delegation, particularly the delegation's willingness to engage in a frank discussion with the Committee and the detail in which its written and additional oral questions were addressed. The Committee regrets that, while the report was mainly drafted on the basis of legal measures enacted or under consideration, insufficient information was provided regarding the actual enjoyment of some of the rights guaranteed in the Covenant. The Committee appreciates that this situation was partly remedied through the oral responses to the Committee's questions, which allowed it to obtain a clearer view of the overall situation in the State party.

[1] At its 1440th meeting (fifty-fourth session) on 26 July 1995.

B. Factors and difficulties affecting the application of the Covenant

3. The Committee notes that it is necessary to overcome vestiges of the totalitarian past and that much remains to be done to strengthening democratic institutions and respect for the rule of law. This has created a legal vacuum in certain areas in which the principles set forth in the Constitution are not implemented by corresponding laws and regulations. The Committee notes that the enactment of new laws is being undertaken by the Government but their consideration by two Chambers of the Federal Assembly prior to promulgation is generally a slow process.

4. The Committee is aware of economic difficulties facing the State party which inevitably affect the application of the Covenant.

C. Positive Aspects

5. The Committee expresses its satisfaction as to the fundamental and positive changes which have recently taken place in the Russian Federation. These changes will create a better political, constitutional and legal framework towards the full implementation of the rights enshrined in the Covenant.

6. The Committee welcomes the new Constitution of 1993, which gives legal recognition to the concept of human rights and freedoms of the individual. The Committee considers that Chapter 2 of the Constitution, which enumerates the rights and liberties of the individuals, conforms to many of the basic rights provided under the Covenant.

7. The Committee welcomes the provisions of article 15, paragraph 4, which, together with the limiting provision of article 125, paragraph 6, establishes that international treaties, including the Covenant, are part of the Russian legal system and superior to domestic law. It further welcomes the inclusion of article 17, paragraph 1, which stipulates that the basic rights and liberties, in conformity with the commonly recognized principles and norms of international law, shall be recognized and guaranteed by the State party under the Constitution, the recognition in the Constitution of the right to apply to international bodies when domestic remedies are exhausted and the written and verbal affirmations that the provisions of the Covenant are directly invocable in domestic courts of law.

8. In this context, the Committee also welcomes the fact that the Russian Federation is party to the Optional Protocol to the Covenant.

9. The Committee welcomes the progress made towards democracy since the consideration of the third periodic report. It also welcomes the promulgation of a number of legal instruments aimed at guaranteeing human rights for all persons in the territory of the State party, including the new Civil Code and Criminal Code. It further welcomes the draft law aimed at a comprehensive reform of the judicial process and the Code of Criminal Procedures currently in the drafting stage, and notes

with appreciation that the right of all persons whose rights are violated to have access to judicial recourse has been legally established.

10. The Committee welcomes the establishment of several bodies charged with the protection of human rights, including the Office of the Human Rights Commissioner under the State Duma, the Presidential Human Rights Commission, as well as the newly established Commission for Human Rights of the Commonwealth of Independent States.

11. The Committee welcomes the Government's assurances that a systematic review of persons placed in psychiatric facilities under previous régimes is carried out and trusts that all those found to be placed in such facilities without due cause will be released

12. The Committee welcomes the special legislation enacted to provide compensation to victims of the events of October 1993.

D. Principal Subjects of Concern

13. The Committee is concerned that the profound legislative changes taking place within the State party have not been matched by the actual protection of human rights at the implementation level. Specifically, it regrets that many of the rights established under the Constitution have not been put into effect through the enactment of implementing laws and regulations and that the relationship of the various bodies entrusted with the protection of human rights has not been clearly defined. In this connection, it regrets that the responsibilities of the Human Rights Commissioner, although understood to be broad in nature and to include the power to investigate complaints of human rights violations, to bring cases to the Constitutional Court whenever Constitutional rights are infringed and to take legislative initiatives, are not specified in the Constitution and have not yet been legally defined in subsequent legislation. In addition, the responsibilities of the Procurator's Office with respect to the protection of human rights would appear to coincide in many respects with those of the Human Rights Commissioner. In relation to these bodies, it is not clear why the Presidential Human Rights Commission operating directly under the President, who is personally responsible as guarantor of human rights under the Constitution, is empowered only with recommendatory functions, and what mechanisms are in place to ensure that presidential decrees conform with the Covenant.

14. The Committee is concerned that, despite guarantees of equality in the Constitution and in labour legislation, the de facto situation of women is one of continuing inequality. The failure to ensure equal remuneration for work of comparable worth and the persistence of attitudes and practices which impose child-rearing and other domestic responsibilities entirely on women contribute to this inequality and to discrimination in the work place. The Committee is especially alarmed at the extent of rape and domestic violence and the inadequate efforts made by the authorities to deal with this problem. It is also alarmed at the high incidence of unemployment among women.

15. Although the Committee notes that the draft Criminal Code before the Federal Assembly would reduce the number of crimes that may result in the imposition of the death penalty, it is still concerned at the wide range of crimes still punishable by such penalty. Moreover, the Committee notes that while the number of persons actually executed has declined dramatically since 1993, sentencing continues, which has resulted in a large and growing number of persons on death row.

16. The Committee expresses deep concern over the practice of pre-trial detention and over this fact that temporary detention has been extended from 10 to 30 days in certain cases. It is concerned by the extent of the Procurator competence to decide on matters relating to arrest or detention which cannot be challenged by the person concerned before a court. Under article 9, paragraph 3, of the Covenant, the detention of persons before they are granted a trial should not be the norm and, when it occurs, persons so detained should be granted a trial within a reasonable time or be released. The Committee is concerned that pre-trial detention is practised, not only in cases of serious criminal charges but more so on misdemeanour charges and frequently for unreasonably long periods of time, and that no effective mechanism exists for monitoring such detention.

17. The Committee further expresses grave concern over the lack of a monitoring mechanism for penitentiary facilities to ensure humane treatment of detainees and prisoners. In this regard, it deplores the cruel, inhuman and degrading conditions that persist in many detention centres and penitentiary facilities and condemns the use of food deprivation as punishment.

18. The Committee expresses concern about the lack of independence and efficiency of judiciary and the long delays in the administration of justice, which do not conform with the requirements of both articles 9 and 14 of the Covenant, and notes in that regard that the judicial system in the Russian Federation cannot be effective to ensure protection of rights until there is a sufficient number of well-trained and qualified judges and lawyers.

19. The Committee is concerned that actions may continue which violate the right to protection from unlawful or arbitrary interference with privacy, family, home or correspondence. It is concerned that the mechanisms to intrude into private telephone communication continue to exist, without a clear legislation setting out the conditions of legitimate interferences with privacy and providing for safeguards against unlawful interferences.

20. Although federal law has provided for the abolition of the propiska system, the Committee is concerned that at regional and local levels, the residence permit system is still applied in practice, thus violating not only the Constitution, but also article 12 of the Covenant. It expresses further concern that the most important legal restriction on the right to leave the country is still cast in terms of State secret. This does not correspond with the requirements of article 12, paragraph 3, of the Covenant and the Committee deplores, in that regard, the resistance to date in bringing the legislation in conformity with the Covenant. The Committee further regrets that all individuals not having yet performed their national service are excluded in principle

from enjoying their right to leave the country.

21. The Committee is concerned that conscientious objection to military service, although recognized under article 59 of the Constitution, is not a practical option under Russian law and takes note in this regard of the draft law on alternative service before the Federal Assembly. It expresses its concern at the possibility that such alternative service may be made punitive, either in nature or in length of service. The Committee is also seriously concerned at the allegations of widespread cruelty and ill-treatment of young conscript-soldiers.

22. The Committee is concerned at reports of growing number of homeless and abandoned children in need of measures of protection.

23. The Committee expresses its concern that the limited definition of the term "national minorities" which serves as the basis for much of the legislation in the State party concerning the rights of persons belonging to minorities does not give protection to all persons referred to in article 27 of the Covenant. It is also concerned at reports of harassment shown towards persons belonging to minority groups from the Caucasian region taking the form of search, beatings, arrests and deportation.

24. The Committee deeply regrets the lack of familiarity of law enforcement and prison officers with the guarantees provided in the new Constitution, with international human rights standards under the Covenant.

25. The Committee expresses concern over the jurisdiction of the military courts in civil cases. Persons detained by members of the armed forces are said to be able to raise complaints before the Military Procurator's Office in charge of the detention centre where they were held. This would appear to create a situation in which the army is entrusted with the judgment and sentencing of the crimes committed by its own members. The Committee is concerned that such a situation may cause miscarriages of justice, particularly in the light of the Government's acknowledgement that the army, even at the highest levels, is not familiar with international human rights law, including the Covenant.

26. The Committee expresses deep concern at the high number of refugees following the events that occurred in North Ossetia in 1992 and at the difficult conditions faced by these displaced persons in the neighbouring Republic of Ingushetia, as well as at the numerous incidents that occurred on their attempts to return to their homeland.

27. With reference to the specific situation in Chechnya, the Committee expresses concern that article 4 of the Covenant, which specifies the provisions that are non-derogable even in times of public emergency, has not been complied with. It maintains that this article is applicable to the situation in Chechnya, where the use of weapons by combatants has led to the loss of life and deprivation of freedom of large numbers of persons, regardless of the fact that a state of emergency has not been formally declared.

28. The Committee deplores the excessive and disproportionate use of force by Russian forces in Chechnya indicating grave violation of human rights. It further deplores the fact that no one has been made responsible for the inhumane treatment of prisoners and other detained persons, that investigations on charges of human rights violations by Russian forces, including killing of civilians, have been so far inadequate, that civilian installations such as schools and hospitals were destroyed by Government forces, and that a large number of civilians have been killed or displaced as a consequence of the destruction of their homes.

29. The Committee expresses deep concern about the large number of reported cases of torture, ill treatment of the person and arbitrary detention in "reception centres" or "filtration camps", which were originally established to determine the identities of captured combatants but are reported to accommodate large numbers of civilians as well. It deplores the maltreatment of detainees in these centres and is concerned that the International Committee of the Red Cross (ICRC) has not been given access to all such camps.

30. The Committee is concerned that, due to the violent excesses of recent developments in Chechnya, the level of confidence of the people in the reconstruction efforts by the local authorities and the attempts to bring relief to human rights violations is extremely low.

E. Suggestions and Recommendations

31. The Committee recommends that the relationship between the various bodies charged with the protection of human rights be clearly defined and coordinated and that the existence and functions of these bodies be widely publicized. The Committee further recommends that a mechanism be clearly established to ensure conformity of all presidential decrees and laws with the provisions of the Covenant and other international human rights instruments to which the State is party.

32. The Committee recommends that the State party review and include information in its next periodic report on the procedures established to ensure compliance with the views and recommendations adopted by the Committee under the first Optional Protocol to the Covenant, also bearing in mind the obligations under article 2 of the Covenant.

33. The Committee recommends that greater efforts be made to collect information on the situation of women and the effects on them of the structural political, economic and social changes taking place. On this basis, the Government should initiate or strengthen programmes aimed at providing assistance to women in difficult circumstances, including unemployed women, victims of domestic violence and victims of rape, with a view to ensuring their equality before the law and the equal protection of the law. In particular, it should consider allocating responsibility for that purpose to an appropriate high-level governmental body.

34. The Committee urges the Government to reduce substantially the number of

crimes for which the death penalty may be imposed, in accordance with article 6 of the Covenant, with a view to its eventual elimination.

35. The Committee recommends that the treatment of persons deprived of their liberty, whether in detention centres or in penitentiary facilities be effectively monitored. In this connection, it strongly recommends the adoption of new rules and regulations that comply fully with articles 7, 9, 10 and 14 of the Covenant and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and that the texts of all prison rules and orders and international norms on prison administration be made public and accessible. The Committee further recommends that priority be given to the establishment of the Visitors' Committee for the correctional institutions of the Federation and that legislation on the judicial review of arrest and detention be urgently passed in compliance with article 9, paragraph 3, of the Covenant, and article 22, paragraph 2, of the Constitution. It urges that the Government should refrain from placing first-time, non-violent and petty offenders in detention centres, and give consideration to various other practical measures designed to reduce the overcrowding of pre-trial detention centres, particularly the greater use of release pending trial. It also calls for an immediate end to the practice of food deprivation as punishment in prisons and encourages the Government's initiatives to institute alternative forms of punishment.

36. The Committee urges a prompt enactment of the legislation on the judiciary and that this legislation fully incorporates the essential guarantees for the independence of the judiciary, including the United Nations Basic Principles on the Independence of the Judiciary. The Committee recommends that efforts be made to make the Covenant and other international human rights norms as widely known as possible, particularly among the authorities invested with the administration of justice, law enforcement and prison officers but also among the general public. It recommends that the State party avail itself of the technical cooperation services of the United Nations Centre for Human Rights.

37. The Committee recommends that the abolition of the propiska system be carried out all over the country without exceptions. Further steps should be taken to bring the law concerning the right to leave the country in full line with the State party's obligations under article 12, paragraphs 2 and 3, of the Covenant and, in particular, to remove restrictions to knowledge of State secrets. The Committee urges that all regional and local authorities be made to conform the Federal policy of abolishing the propiska system (i.e. the system of "internal passes" or "passports").

38. The Committee urges that a legislation be passed on the protection of privacy, as well as strict and positive action be taken to prevent violations of the right to protection from unlawful or arbitrary interference with privacy, family, home or correspondence.

39. The Committee urges that stringent measures be adopted to ensure an immediate end to mistreatment and abuse of army recruits by their officers and fellow soldiers. It further recommends that every effort be made to ensure that reasonable alternatives to military service be made available that are not punitive in nature or in

length of service. It urges that all charges brought against conscientious objectors to military service be dropped.

40. The Committee recommends that national legislation be amended to reflect the broad concept of minorities contained in articles 2, 26 and 27 of the Covenant, which prohibit discrimination on the basis of race, colour, sex, opinion or other status and further protect the rights not only of "national minorities" but also of ethnic, religious and linguistic minorities.

41. The Committee urges that appropriate and effective measures be adopted to enable all displaced persons as a consequence of the events that occurred in North Ossetia in 1992 to return to their homeland.

42. The Committee firmly urges that the serious violations of human rights which occurred and continue to occur in Chechnya be vigorously and immediately investigated, the perpetrators punished and the victims compensated. It urges the Government to ensure that all persons held in detention are held for legitimate cause, for a reasonable period of time, and under humane conditions, in conformity with the State party's obligations under the Covenant.

43. The Committee, noting with appreciation the Government's assurances that the ICRC will be granted access to all detention camps, urges that such access be granted immediately in the region of Chechnya and neighbouring republics, to allow the ICRC not only to monitor the treatment of detainees but also to provide supplies and services.

44. The Committee recommends that, in order to address the lack of confidence in the local Government authorities, the Government consider inviting a greater international presence, including by the Centre for Human Rights, to assist the Special multilateral Commission established to investigate recent events in Chechnya in improving the effectiveness of human rights investigations and ensuring fairness of trials until such time as the judiciary is functioning properly. Such a measure would make clear that the Government is committed to ending human rights violations both by submitting itself to international scrutiny and by drawing on international expertise toward this end.

45. The Committee urges that adequate measures be adopted to alleviate the conditions of all displaced persons following the fightings in Chechnya, including measures aimed at facilitating their return to their towns and villages.

46. The Committee recommends that education in human rights be included in school and university curricula and that its comments be widely disseminated and incorporated into the curricula of all human rights training programmes organised for law-enforcement officials and administration officers.